III. REMARKS

Status of the Claims

Claims 1-44 are presented for reconsideration.

Summary of the Office Action

Claims 37-44 stand rejected under 35USC102(e) on the basis of the cited reference Meyers, et al, U.S. Publication No. 2004/0102249. Claims 1-36 stand rejected based on the reference Hansted, U.S. Publication No. 2002/0006826 in view of Meyers. The Examiner is respectfully requested to reconsider his rejection in view of the following remarks.

The Invention

The applicant's invention concerns a situation in which a user of an electronic terminal may call another user to a common session of executing recreational software. As an illustrative example, the two users aim at playing an electronic game together, using their terminals. Before they can begin playing, they must establish a state in which each electronic terminal contains all those pieces of executable software that are needed for playing the game; obviously, if one of the terminals does not have the necessary software components, it is not possible to use that terminal for playing.

Two basic approaches are given in the applicant's description. According to a first embodiment, the process of calling another player to the game involves delivering an executable software component of the game to the terminal of the invited player. This embodiment is described in applicant's independent claims 1, 36, 39, 41, and 43. According to a second embodiment, the executable

software components of the game exist in both terminals already, but the process of inviting another player to the game involves delivering an enablement token to the terminal of the invited player, so that only after having received the enablement token the terminal is able to take the executable software of the game into use. This embodiment is described in applicant's independent claims 37, 38, 40, 42, and 44. It should be noted that the executable software is in each and every case the actual, dedicated recreational software; i.e. the program code of the game itself.

Discussion of the Cited References

The Examiner relies on the newly cited reference Meyers to support the rejections based on anticipation and obviousness.

The Meyers publication discloses a "virtual ball" game, in which a message transmitted between wireless terminals serves as a "ball". If you receive the message, you have "caught" the ball and may "throw" it further by transmitting a message (the virtual ball) to another terminal. However, the game itself depends on the physical movements of the players. Playing the game depends on software only to the extent that the terminals must be able to receive and transmit a message. There is no mention of any application software being transferred with the "ball"

The virtual ball of Meyers has nothing to do with executable software. It is simply a message. Each terminal must have previously installed the necessary software components to handle (e.g. automatically display) a message, in order to play the virtual ball game.

Applicant's first embodiment, as described above, may be easily

distinguished from Meyers. Meyers simply does not suggest delivering executable software components at any parts of the process. All executable software must be installed, ready and operable within each terminal device concerned before any invitations to game may occur. It would appear that the only software needed is a messaging application.

The reference Meyers' may be distinguished from the second embodiment of applicant's invention by comparing the initial steps of each game play. In applicant's second embodiment, the game cannot start without the transfer of enablement token from a first player to a second player. In the game of Meyers the virtual ball is passed, and caught without anything, but an exchange of messages. Even if the virtual ball is only at the first terminal when Meyers' game begins, the holders of the other terminals are already actively taking part in the game, when the first player starts passing the virtual ball around. Note that since the essential part of the game of Meyers involves the players physically moving around, one actually does not need to receive the virtual ball at all in order to take part in the game in Meyers. Compare the situation to American football, where a large number of players may actually play through a whole match without even touching the ball, if their position, in team tactics, happens to be one where you just keep the adversary's players from advancing or the like.

Independent claims 1, 36, 39, 41, and 43 of the subject application consistently require that only after the second terminal arrangement has received the proposal [to take part in the game], a state is established in which both the first and second terminal arrangements possess enough executable software components of the recreational application for setting up a

common, shared session. Meyers does not disclose transmitting or receiving a proposal, because Meyers only discloses transmitting and receiving a "virtual ball" message, the transmission and reception of which is already a part of the game and must thus take place after proposals have been (orally?) exchanged between the would-be players. Meyers does not disclose that, only after receiving a proposal, a state of enough possessed executable software would be established, because first of all the executable software of Meyers is not dedicated recreational software at all but only general purpose software for handling messages, and secondly all such executable software has been installed in all terminals already well in advance.

Independent claims 37, 38, 40, 42, and 44 also require that a proposal is received at the second terminal, and only after that something happens. Meyers does not disclose transmitting or receiving a proposal, because Meyers only discloses transmitting and receiving a "virtual ball" message, the transmission and reception of which is already a part of the game and must thus take place after proposals have been (orally?) exchanged between the would-be players. Said independent claims also require there to be executable software components of the recreational software. Meyers does not disclose this, because in order to play the game a Meyers' terminal must only have the general purpose messaging functions, which as such do not constitute software components of recreational software. Additionally said independent claims require that only after the second terminal has received the proposal, there will be delivered an enablement token or a software component that will enable executing the executable the recreational application. Meyers does not disclose this, because firstly Meyers does not mention proposals at all, and secondly Meyers' message-handling software is fully

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executable and available for all use independently of whether a terminal has received the virtual ball or not. In other words, a terminal according to Meyers is all the time ready and available for receiving and transmitting messages, and these functionalities do not need receiving any further enablement tokens or other enabling software.

It is well settled that the anticipation analysis requires a positive answer to the question of whether the game of Meyers would infringe the claims of this application if it were later.

The independent claims of this application are directed to a method, apparatus, software, or system for distributing a recreational application having the following feature:

> "only after the second terminal arrangement has received said proposal, using the communicational capabilities of at least one of the first and second terminal arrangements to establish a state where both the first terminal arrangement and the second terminal arrangement possess executable software components of said recreational application for setting up a common, shared session and for executing said recreational application on said first and second terminals."

Since this capability is not present in the system of the reference Meyers, there can be no infringement of the subject claims. Therefore the disclosure of Meyers does not support the rejection based on anticipation with respect to any of the claims.

The Issue of Obviousness

The Examiner cites the reference Hansted in view of Meyers in support of the rejection based on obviousness. In Hansted, the recreational application is executed in a remote server, and the mobile terminals only act as input/output devices that handle non-executable data: based on how the user interacted with the

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user interface of the mobile terminal the latter sends an input to the server, which takes it into account in the execution of Hansted's recreational application. When the execution of Hansted's recreational application produces a piece of output, this is conveyed to the mobile terminal which presents it to the user. The processing and execution of the recreational application occurs at the server. There is no mention of downloading recreational applications to the portable communication unit.

Throughout the reference Hansted, there is described instances where the central data processing unit sends game information (#0041), this includes: next event data (#0042), advertisements (#0043), statistics (#0044), starting point (#0052), other players (#0053), user name and password (#0071), session identifiers (#0079, and other information. There is no mention of the transmission of software components. This is because the recreational application is executable on the central data processing unit.

The Examiner acknowledges that the reference Hansted does not disclose executing the recreational software on the mobile terminals and seeks to combine the disclosure of Hansted with the disclosure of Meyers in order to remedy this deficiency. Applicant submits that this is beyond the scope of 35USC103 because there is nothing in either of the cited references that would motivate a person skilled in the art to make such a combination. The game of the reference Meyers only requires the Short Message Service Center of a wireless communication network. This makes its execution simple and unencumbered. There is, therefore, no reason to utilize any portion of the disclosure of Hansted in Meyers. Conversely the type of games, evidently
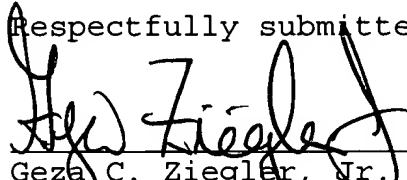
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contemplated in the reference Hansted, require considerably more than the Short Message Service to operate. Such games require the execution on the centralized processing unit. The systems of Hansted and Meyers are not compatible, even though they may be analogous art.

According to basic tenets of patent law, in order to support an obviousness rejection, there must be some suggestion of the desirability of making the modification, aside from the subject application. The claimed invention must be considered as a whole and the references must suggest the desirability and thus the obviousness of making the modification, the references must be viewed without the benefit of hindsight. (See MPEP sections 706.02(a) and 2141. Applicant submits that the modification of the teachings of Hansted and Meyers in order to obtain the invention, as described in the claims of this application, would not have been obvious to one skilled in the art. There is no indication that such a modification would be desirable.

For all of the foregoing reasons, it is respectfully submitted that all of the claims now present in the application are clearly novel and patentable over the prior art of record, and are in proper form for allowance. Accordingly, favorable reconsideration and allowance is respectfully requested. Should any unresolved issues remain, the Examiner is invited to call Applicants' attorney at the telephone number indicated below.

A check in the amount of $120 is enclosed for a one-month extension of time. The Commissioner is hereby authorized to charge payment for any fees associated with this communication or credit any over payment to Deposit Account No. 16-1350.

Respectfully submitted,
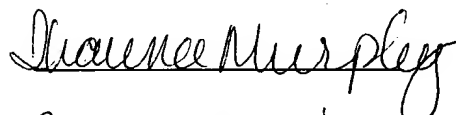
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